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SUPREME COURT, U.S.

No. 98-96

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ELLIOTT'S ENTERPRISES, INC.,

Petitioner,

v.

FLYING J, INC., *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly applied state-law doctrines of laches and equitable estoppel to the particular facts of this case.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents Flying J, Inc. and CFJ Properties respectfully submit this brief in opposition to the petition for a writ of certiorari filed by petitioner Elliott's Enterprises, Inc.

STATEMENT

1. Petitioner operates two retail gasoline outlets in Caroline County, Virginia. Pet. App. 2. In 1994, respondents proposed to build a travel plaza, including truck fueling facilities, near petitioner's outlets. *Ibid.* Mr. Elliott, petitioner's chief executive officer, "wrote a letter to Caroline County authorities endorsing Flying J's proposal and urging its approval." *Ibid.* Respondents obtained zoning approval and building permits, and "[a]fter eight months of construction costing millions of dollars, Flying J opened for business in January 1996." *Id.* at 3.

"Despite [its] earlier support for Flying J's efforts," petitioner filed suit against respondents on December 26, 1996. Pet. App. 3. Petitioner alleged that respondents were petroleum refiners and therefore were prohibited under the Virginia Petroleum Products Franchise Act from operating a retail gasoline outlet within one and one-half miles of petitioner's outlets. *Id.* at 3-4; *see* Va. Code Ann. § 59.1-21.16:2(A).

2. After petitioner's lawsuit was removed to federal court, the district court granted summary judgment to respondents on the ground that petitioner's action was barred by the doctrine of laches. Pet. App. 9.

3. The court of appeals affirmed. The court first held that the district court had correctly held that petitioner's claims for equitable relief were barred by the doctrine of laches: "[A]fter the CEO of [petitioner] advocated zoning approval and publicly supported building the truck stop, and then [sat] idly by while [respondents] spent 9 million dollars building it, and then waited to see the effect that the truck stop would have on his company's profits .... [petitioner] cannot be heard to complain that the same ... truck stop violates its rights under the Petroleum Products Franchise Act." Pet. App. 5.

The court of appeals recognized that petitioner had sought legal damages as well as equitable relief, and that "[e]ven if laches may not be asserted against claims for legal damages, the defense of equitable estoppel bars both legal and equitable claims." Pet. App. 6 (citing *Massachusetts Bonding & Ins. Co.* v. *Piedmont Service Station, Inc.*, 181 S.E. 397 (Va. 1935)). Under Virginia law, equitable estoppel is "the consequence worked by operation of law which enjoins one whose action or inaction has induced reliance by another from benefiting from a change in his position at the expense of the other." *Employers Commercial Union Ins. Co.* v. *Great American Ins. Co.*, 200 S.E.2d 560, 562 (Va. 1973) (quoted at Pet. App. 6-7).

The court of appeals thoroughly reviewed the evidentiary record relating to the elements of equitable estoppel:

> Elliott's CEO Carroll Elliott overtly and publicly represented to Flying J that he was in favor of Flying J's plans to build a travel plaza directly across the street from an Elliott's Exxon station. Although Mr. Elliott was aware that Flying J could sell gas more profitably than Elliott's, he actively encouraged Caroline County officials to approve Flying J's proposal. Flying J, believing that Elliott's acquiesced in its construction plans and acting with Elliott's encouragement, invested $9 million in building a travel plaza, while Mr. Elliott presumably watched the blocks being laid from across the street. Elliott's belated demand that Flying J shut down its multi-million dollar travel plaza and pay damages, if granted, would greatly prejudice [respondents].

Pet. App. 7-8 (record citations omitted). Because "Elliott's cannot now be heard to complain about a competing business that it so actively solicited," the court of appeals concluded that all of petitioner's "claim[s] for relief [are] barred by the defenses of laches and equitable estoppel." *Id.* at 8.

REASONS FOR DENYING THE PETITION

The petition for a writ of certiorari is based entirely on the premise that the courts below erroneously applied state law to the particular facts of this case. Petitioner alleges no conflict of decisions, the questions presented are entirely fact-bound, and petitioner's contentions, which involve only state law, are meritless. The petition should be denied because it meets none of the criteria traditionally considered by this Court in granting discretionary review. *See* this Court's Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law").

1. Petitioner first asserts that because it allegedly "did not know that Flying J was a refiner or affiliated with a refiner and did not know of the existence of CFJ Properties . . . at the time Mr. Elliott wrote the letter supporting respondents' endeavor, petitioner was wholly unaware that it would be illegal pursuant to Virginia law for respondents to operate the travel plaza." Pet. 6. Petitioner's purely factual contention regarding its alleged lack of knowledge of respondents' business operations does not warrant review by this Court. *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant certiorari to review evidence and discuss specific facts"). Moreover, both the district court and the court of appeals have already rejected petitioner's contention that it lacked the requisite knowledge to file suit until 1996. *See* Pet. App. 8. Where, as here, both lower courts have resolved a factual issue against petitioner, further review by this Court is unwarranted. *Goodman* v. *Lukens Steel Co.*, 482 U.S. 656, 665 (1987); *United States* v. *Doe*, 465 U.S. 605, 614 (1984).

2. Petitioner next complains that the doctrine of laches is inapplicable because petitioner purportedly filed suit within the two-year statute of limitations provided by the Virginia Petroleum Products Franchise Act. Pet. 8-9. That contention is plainly incorrect as a matter of Virginia law. *See, e.g.*, *Burnham* v. *James*, 42 S.E. 292, 293 (Va. 1902) ("Equity will sometimes refuse relief where a shorter term than that prescribed by the statute of limitations has elapsed without suit"); *Dry* v. *Rice*, 137 S.E. 473, 475 (Va. 1927). The principle that laches or other equitable doctrines may preclude actions that are not statutorily time-barred is uniformly applied. *See, e.g.*, *Maksym* v. *Loesch*, 937 F.2d 1237, 1248 (7th Cir. 1991) (Posner, J.) (courts may "invok[e] laches to bar suits that had been brought within the statutory period"). Petitioner cites no contrary authority.

3. Petitioner's final argument is that the court of appeals "plainly misapplied the Virginia doctrine of equitable estoppel." Pet. 10. The court of appeals' construction of state

law, however, does not warrant review by this Court. *See, e.g.*, *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944) ("ordinarily we accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts"). In any event, the premise for the argument that the court of appeals "misapplied" state law—petitioner's factual contention that respondents did not rely on petitioner's endorsement of their travel plaza (*see* Pet. 10-11)—was specifically rejected by the court of appeals. Pet. App. 8.

4. This is a textbook case for the application of laches and equitable estoppel. Petitioner lulled respondents into spending millions of dollars to construct a travel plaza with petitioner's express approval, then sued years later in an effort to force respondents to cease operations. This Court has long recognized that "where property has been developed by the courage and energy and at the expense of the defendants, courts will look with disfavor upon the claims of those who have lain idle while awaiting the results of this development." *Johnston* v. *Standard Mining Co.*, 148 U.S. 360, 371 (1893). Having acquiesced in the construction of respondents' travel plaza, petitioner cannot now be heard to complain of its operation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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